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TITLE 36--PARKS, FORESTS, AND PUBLIC PROPERTY

CHAPTER I--NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

PART 18--LEASING OF PROPERTIES IN PARK AREAS--Table of Contents

Sec. 18.1 What is the authority and purpose for this part?

16 U.S.C. 1 et seq., particularly 16 U.S.C. 1a-2(k), and, 16 U.S.C. 470h-3 are the authorities for this part. These authorities allow the Director (or delegated officials) to lease certain federally owned or administered property located within the boundaries of park areas. All leases to be entered into by the Director under these authorities are subject to the requirements of this part, except that, proposed leases that were solicited pursuant to this part prior to January 28, 2002, may be executed in accordance with the terms of the solicitation.

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Sec. 18.2 What definitions do you need to know to understand this part?

In addition to the definitions contained in 36 CFR Part 1, the following definitions apply to this part:

(a) Associated property means land and/or structures (e.g., parking lots, retaining walls, walkways, infrastructure facilities, farm fields) related to a building or buildings and their functional use and occupancy.

(b) Building means an enclosed structure located within the boundaries of a park area and constructed with walls and a roof to serve a residential, industrial, commercial, agricultural or other human use.

(c) Commercial use authorization means a written authorization to provide services to park area visitors issued by the Director pursuant to Section 418 of Public Law 105-391 and implementing regulations.

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(d) Concession contract has the meaning stated in 36 CFR part 51.

(e) Fair market value rent means the most probable rent, as of a specific date, in cash or in terms equivalent to cash, for which the property to be leased, under the terms and conditions of the lease, should rent for its highest and best permitted use after reasonable exposure in a competitive market under all conditions requisite to a fair leasing opportunity, with the lessor and the lessee each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress. Determinations of fair market value rent under this part are to be made taking into account the considerations

stated in Sec. 18.5.

(f) Historic building means a building or buildings located within the boundaries of a park area if the building is part of a pre-historic or historic district or site included on, or eligible for inclusion on, the National Register of Historic Places.

(g) Historic land means land located within the boundaries of an historic property.

(h) Historic property means building(s) and land located within the boundaries of a park area if the building(s) and land are part of a pre-historic or historic district or site included on, or eligible for inclusion on, the National Register of Historic Places.

(i) Land means unimproved real property.

(j) Lease means a written contract entered into under the authority of this part through which use and possession of property is granted to a person for a specified period of time.

(k) Non-historic building is a building (or buildings) and its associated property located within the boundaries of a park area but not part of a pre-historic or historic district or site included on, or eligible for inclusion on, the National Register of Historic Places.

(l) Non-historic land means land located within the boundaries of a park area that is not associated property and is not part of a pre-historic or historic district or site included on, or eligible for inclusion on, the National Register of Historic Places.

(m) Non-historic property means building(s) and/or land that are located within the boundaries of a park area but are not part of a pre-historic or historic district or site included on, or eligible for inclusion on, the National Register of Historic Places.

(n) Park area means a unit of the national park system.

(o) Property means both historic and non-historic property that is located within the boundaries of a park area and is federally owned or administered.

(p) Request for bids refers to the lease bid process described in Sec. 18.7.

(q) Request for proposals refers to the lease proposal process described in Sec. 18.8.

(r) Responsive bid or proposal means a timely submitted bid or proposal that meets the material requirements of a request for bids or a request for proposals.

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Sec. 18.3 What property may be leased?

(a) In general. The Director may lease any property (except non-historic land) under this part if the Director makes the determinations required by Sec. 18.4.

(b) Non-historic land. Non-historic land may not be leased under this part. Certain non-historic land is eligible for leasing under 36 CFR part 17.

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Sec. 18.4 What determinations must the Director make before leasing property?

Before leasing property in a park area under this part, the Director

must determine that:

(a) The lease will not result in degradation of the purposes and values of the park area;

(b) The lease will not deprive the park area of property necessary for appropriate park protection, interpretation, visitor enjoyment, or administration of the park area;

(c) The lease contains such terms and conditions as will assure the leased property will be used for activity and in a manner that are consistent with the purposes established by law for the park area in which the property is located;

(d) The lease is compatible with the programs of the National Park Service;

(e) The lease is for rent at least equal to the fair market value rent of the leased property as described in Sec. 18.5;

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(f) The proposed activities under the lease are not subject to authorization through a concession contract, commercial use authorization or similar instrument; and

(g) If the lease is to include historic property, the lease will adequately insure the preservation of the historic property.

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Sec. 18.5 May property be leased without receiving fair market value rent?

Property may be leased under this part only if the lease requires payment of rent to the government equal to or higher than the property's fair market value rent. The determination of fair market value rent shall take into account:

(a) Any restrictions on the use of the property or terms of the lease that limit the value and/or the highest and best use of the property; and

(b) Any requirements under the lease for the lessee to restore, rehabilitate or otherwise improve the leased property.

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Sec. 18.6 Are there limitations on the use of property leased under this part?

(a) A lease issued under this part may authorize the use of the leased property for any lawful purpose, subject to the determinations required by Sec. 18.4 and the limitations on activities set forth in paragraph (b) of this section.

(b) Unless otherwise authorized by law, a lease issued under this part may not authorize the lessee to engage in activities that are subject to authorization through a concession contract, commercial use authorization or similar instrument. Proposed lease activities are subject to authorization under a concession contract if the Director determines in accordance with 36 CFR part 51 and park area planning documents and related guidelines and policies that the proposed activities meet applicable requirements for issuance of a concession contract. Proposed activities are subject to authorization under a

commercial use authorization if the Director determines in accordance with park area planning documents and related guidelines and policies that the proposed activities meet applicable requirements for issuance of a commercial use authorization.

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Sec. 18.7 How are lease proposals solicited and selected if the Director issues a Request for Bids?

(a) If the amount of the rent is the only criterion for award of a lease, the Director may solicit bids through issuance of a request for bids as described in this section. If historic property is to be leased under the authority of this section, the Director must comply with 36 CFR part 800 (commenting procedures of the Advisory Council on Historic Preservation) at an appropriate time during the leasing process.

(b) A request for bids under this section shall be advertised by public notice published at least twice in local and/or national newspapers of general circulation. The notice shall provide at least a thirty (30) day period from the last date of publication for the submission of sealed bids. The notice will provide necessary information to prospective bidders. It may specify a minimum rent and/or require submission of a rent deposit or advance rent payment. Bids will be considered only if timely received at the place designated in the request. Bids must be in the form specified by the Director, or, if no form is specified, a bid must be in writing, signed by the bidder or authorized representative, state the amount of the bid, and refer to the applicable public notice. If the notice requires submission of a rent deposit or advance rent payment, the bids must include the required funds in the form of a certified check, post office money order, bank drafts, or cashier's checks made out to the United States of America. The bid (and payment where applicable) must be enclosed in a sealed envelope upon which the bidder shall write: ``Bid on lease of property of the National Park Service'' and shall note the date the bids are to be opened.

(c) Bids will be opened publicly by the Director at a time and place specified in the public notice. Bidders or their representatives may attend the bid opening. The bidder submitting a responsive bid offering the highest rent will be selected for award of the lease (subject to a determination of financial

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capability by the Director). A responsive bid is a bid that meets the material terms and conditions of the request for bids. The Director shall accept no bid in an amount less than the fair market rental value as determined by the Director. If two or more bids are equal, a drawing shall make the lease award by lot limited to the equal responsive bids received.

(d) When a property is to be leased through a request for bids, the bidder that is declared by the Director to be the high bidder shall be bound by his bid and this part to execute the offered lease, unless the bid is rejected. If the declared high bidder fails to enter into the lease for any reason, the Director may choose to enter into the lease with the next highest bidder (if that bidder offered to pay at least the fair market rent value). The Director may reject any and all bids in his

discretion and resolicit or cancel a lease solicitation under this part at any time without liability to any person.

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Sec. 18.8 How are lease proposals solicited and selected if the Director issues a Request for Proposals?

(a) When the award of a lease is to be based on selection criteria in addition to or other than the amount of the rent, the Director must, subject to Sec. 18.9, solicit proposals for the lease through issuance of a public Request for Proposals (RFP).

(b) An RFP may be preceded by issuance of a public Request for Qualifications (RFQ). The purpose of an RFQ is to select a ``short list'' of potential offerors that meet minimum management, financial and other qualifications necessary for submission of a proposal in response to an RFP. If the Director issues an RFQ, only persons determined as qualified by the Director under the terms of the RFQ shall be eligible to submit a proposal under the related RFP.

(c) The Director must provide public notice of the leasing opportunity by publication at least twice in local and/or national newspapers of general circulation and/or through publication in the Commerce Business Daily. The public notice shall contain general information about the leasing opportunity and advise interested persons how to obtain a copy of the RFP (or RFQ where applicable). The RFP (and RFQ where applicable) shall contain appropriate information about the property proposed for lease, including limitations on the uses of the property to be leased, information concerning the leasing process, information and materials that must be contained in a proposal, the time and place for submission of proposals, terms and conditions of the lease, and the criteria under which the Director will evaluate proposals. The RFP may state the fair market value rent as the minimum acceptable rent if determined by the Director at that time. The RFP (and RFQ where applicable) must allow at least sixty (60) days for submission of proposals (or qualifications under an RFQ) unless a shorter period of time is determined to be sufficient in the circumstances of a particular solicitation.

(d) The Director may determine that a proposal is non-responsive and not consider it further. A non-responsive proposal is a proposal that was not timely submitted or fails to meet the material terms and conditions of the RFP. After the submission of offers and prior to the selection of the best overall proposal, the Director may request from any offeror additional information or written clarification of a proposal, provided that proposals may not be amended after the submission date unless all offerors that submitted responsive proposals are given an opportunity to amend their proposals. The Director may choose to reject all proposals received at any time and resolicit or cancel a solicitation under this part without liability to any person.

(e) (1) The criteria to be used in selection of the best proposal are:

(i) The compatibility of the proposal's intended use of the leased property with respect to preservation, protection, and visitor enjoyment of the park;

(ii) The financial capability of the offeror to carry out the terms of the lease;

(iii) The experience of the offeror demonstrating the managerial

capability to carry out the terms of the lease;

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(iv) The ability and commitment of the offeror to conduct its activities in the park area in an environmentally enhancing manner through, among other programs and actions, energy conservation, waste reduction, and recycling; and

(v) Any other criteria the RFP may specify.

(2) If the property to be leased is an historic property, the compatibility of the proposal with the historic qualities of the property shall be an additional selection criterion. If the RFP requires proposals to include the amount of rent offered, the amount of rent offered also shall be an additional selection criterion.

(f) The Director will evaluate all responsive proposals received. The responsive proposal determined by the Director to best meet on an overall basis the evaluation criteria will be selected for negotiation of the lease. If two or more responsive proposals are determined by the Director to be substantially equal under the evaluation criteria, the Director shall provide an opportunity for those proposals to be amended by their offerors as necessary for the Director to select the best amended proposal. In such circumstances, the Director will provide each offeror that submitted a substantially equal proposal appropriate information as to how their proposals may be amended in order to enhance the possibility of selection as the best amended proposal. If two or more proposals remain as substantially equal after amendment, the Director will select for negotiation of the lease from among these proposals the proposal that the Director determines on an overall basis will be most beneficial to effective management of the park area.

(g) The Director will provide the offeror that submitted the best overall responsive proposal as determined by the Director a specified period of time to negotiate the final terms of the lease (and may enter into a letter of intent to negotiate in this connection). The final terms of the lease must be consistent with the requirements of the RFP. If the negotiations do not result in an executed lease within the specified time period, the Director, in his discretion, may extend the negotiation period, terminate negotiations and negotiate with the offeror that submitted the next best responsive proposal, or, cancel the solicitation.

(h) RFPs may state that the amount of rent to be paid will be negotiated subsequently with the offeror that submitted the best proposal, initially or as amended. The Director may execute a lease only if the Director determines that it requires the lessee to pay at least the fair market value rent of the leased property.

(i) The Director may execute a lease that includes historic property only after complying with 36 CFR part 800 (commenting procedures of the Advisory Council on Historic Preservation).

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Sec. 18.9 When may the Director lease property without issuing a request for bids or a request for proposals?

The Director, except as provided in this section, may not lease property without issuing a request for bids or a request for proposals in compliance with Sec. 18.7 or Sec. 18.8. The Director under this part

may enter into leases with non-profit organizations (recognized as such by the Internal Revenue Service) or units of government without complying with Sec. Sec. 18.7 or 18.8 if the Director determines that the non-profit or governmental use of the property will contribute to the purposes and programs of the park area. All other requirements of this part are applicable to leases entered into or to be entered into under authority of this section. The Director may enter into leases under this part with a term of sixty (60) days or less without complying with Sec. Sec. 18.7 or 18.8 if the Director determines that to do so is in the best interests of the administration of the park area. If historic land is to be leased under the authority of this section, the Director must comply with 36 CFR part 800 (commenting procedures of the Advisory Council on Historic Preservation) before entering into the lease.

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Sec. 51.10 How long will I have to submit my proposal?

The Director will allow an appropriate period for submission of proposals that is not less than 60 days unless the Director determines that a shorter time is appropriate in the circumstances of a particular solicitation. Proposals that are not timely submitted will not be considered by the Director.

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Sec. 51.11 May the Director amend, extend, or cancel a prospectus or solicitation?

The Director may amend a prospectus and/or extend the submission

date prior to the proposal due date. The Director may cancel a solicitation at any time prior to award of the concession contract if the Director determines in his discretion that this action is appropriate in the public interest. No offeror or other person will obtain compensable or other legal rights as a result of an amended, extended, canceled or resolicited solicitation for a concession contract.

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Sec. 51.12 Are there any other additional procedures that I must follow to apply for a concession contract?

The Director may specify in a prospectus additional solicitation and/or selection procedures consistent with the requirements of this part in the interest of enhancing competition. Such additional procedures may include, but are not limited to, issuance of a two-phased prospectus--a qualifications phase and a proposal phase. The Director will incorporate simplified administrative requirements and procedures in prospectuses for concession contracts that the Director considers are likely to be awarded to a sole proprietorship or are likely to have annual gross receipts of less than \$100,000. Such simplified requirements and procedures may include, as appropriate and without limitation, a reduced application package, a shorter proposal submission period, and a reduction of proposal information requirements.